

Elyana R. Sutin  
Regional Judicial Officer

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2. The Complaint alleges that Respondent violated sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344, and their implementing regulations by discharging dredged and fill material into waters of the United States without a permit and by failing to perform mitigation required by a permit issued by the U.S. Army Corps of Engineers ("Corps").

3. Respondent filed an Answer and requested a hearing pursuant to section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. § 22.15(c).

4. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, agents, successors and assigns, including, but not limited to, subsequent purchasers.

5. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue in any action brought by EPA to enforce the terms of this Consent Agreement, and, without admitting or denying the factual allegations contained in the Complaint, consents to the terms of this Consent Agreement. Respondent reserves the right to deny, present evidence in contradiction of any alleged violation, and to dispute jurisdiction under the CWA in any other context or forum.

6. Respondent further waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

## **II. TERMS OF SETTLEMENT**

7. Pursuant to section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and based in part on the nature of the violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is the amount of \$9,500.00, to be paid as follows:

- a. Within thirty (30) days of receipt of the Consent Agreement and signed Final Order issued by the Regional Judicial Officer, Respondent shall pay \$1,000.00 to Treasurer, United States of America.
  - b. Respondent shall make four additional payments to Treasurer, United States of America, each subsequent year on the same day and month as the initial payment in the amounts listed below:

Year one following initial payment:	\$1,000.00
Year two following initial payment:	\$1,000.00
Year three following initial payment:	\$1,500.00
Year four following initial payment:	\$5,000.00
  - c. The penalty payments required by paragraphs 7.a. and 7.b., above, and the Wetlands Compliance Training described below may be paid by Mr. Scott Petro in his personal capacity or by Petro Properties, LLC.
8. Respondent consents to the issuance of this Consent Agreement and consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph and to the performance of the Wetlands Compliance Training.
9. Respondent or Mr. Scott Petro shall pay the agreed upon civil penalty by remitting cashier's or certified checks, according to the schedule set forth in paragraph 7, above, payable to "Treasurer, United States of America," to:

Regular Mail:

Mellon Bank  
Regional Hearing Clerk - EPA Region 8  
Lockbox 360859  
Pittsburgh, PA 15251-6859

Federal Express, Airborne, or other commercial carrier:

U.S. EPA, 360859  
Mellon Client Service Center Rm. 154-0670  
500 Ross Street  
Pittsburgh, PA 15251-6859

Wire Transfers:

Wire transfers may be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004  
TREAS NYC/CTR/  
BNF=/AC-68011008

The payment must reference Respondent Petro's name and the EPA Docket Number of this action. A copy of each transmittal of payment shall be sent simultaneously to the following addresses:

Prior to 1/6/07  
Regional Hearing Clerk  
U.S. EPA, Region 8 (8RC)  
999 18th Street, Suite 300  
Denver, CO 80202-2466

and

Wendy Silver  
Enforcement Attorney  
U.S. EPA, Region 8 (8ENF-L)  
999 18th Street, Suite 300  
Denver, CO 80202-2466

and

Financial Management Officer  
U.S. EPA, Region 8 (8TMS-F)  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466

On and after 1/7/07  
Regional Hearing Clerk  
U.S. EPA, Region 8 (8RC)  
1595 Wynkoop  
Denver, CO 80202-1129

and

Wendy Silver  
Enforcement Attorney  
U.S. EPA, Region 8 (8ENF-L)  
1595 Wynkoop  
Denver, CO 80202-1129

and

Financial Management Officer  
U.S. EPA, Region 8 (8TMS-F)  
1595 Wynkoop  
Denver, CO 80202-1129

10. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty and any stipulated penalties due and owing under Paragraph 17 herein if the penalty is not paid when due. Interest will be assessed at the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

11. The penalty specified in Paragraph 7, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal and state taxes.

12. Wetlands Compliance Training. Respondent shall complete the following Wetlands Compliance Training ("Training"). Respondent's total expenditure for implementation of the Training shall be not less than \$10,000.00. Within sixty (60) days of the latter of receipt of a signed Final Order in this matter or issuance of joint guidance by EPA and the Corps clarifying CWA jurisdiction in light of the Supreme Court decision in *Rapanos v. United States*, No. 04-1034 (2006), but in no case more than six months after receipt of a signed Final Order in this matter, Respondent shall complete the Training as follows:

- a. Seminar Announcement. Respondent shall send a Seminar Announcement to local real estate development trade associations and environmental engineering firms located in the State of Utah advertising a free seminar entitled "What Developers

Need to Know About Clean Water Act Section 404 Requirements” (“Seminar”).

The Seminar shall be open to the public and held in Salt Lake City. If the RSVPs exceed fifty (50) in number, Respondent shall rent space large enough to accommodate the expected number of attendees, otherwise the Seminar shall be held at the Salt Lake City office of Holland & Hart.

- b. Seminar Timing. The Seminar shall take place on a weekday within the time frame set forth above, from the hours of 8:00 AM to 12:00 noon.
- c. Seminar Format. The Seminar shall be broken down into the following four parts with a question and answer period to follow each part: (1) “Recognizing Jurisdictional Wetlands and Other Waters of the United States,” (2) “Clean Water Act § 404 Permit Process,” (3) “Corps and EPA Enforcement of Clean Water Act § 404,” and (4) “Other Cutting Edge Issues.”
- d. Seminar Materials. Respondent shall prepare resource materials to be provided to attendees and others who cannot attend but who request such materials. The materials shall include (1) applicable regulations, (2) Corps and EPA guidance documents, (3) recent judicial decisions, and (4) a brief outline of the presentations pertaining to each of the parts described in the above subparagraph.
- e. Seminar Speakers. Respondent shall coordinate with the Corps and EPA personnel to determine which, if any, Federal government personnel can be available to participate as a speaker for one or more parts or portions of parts of the Seminar described above. EPA and Corps personnel may attend the Seminar regardless of whether they participate as speakers.

- f. EPA Approval. Respondent shall obtain EPA's prior approval of the Seminar Announcement, Seminar Materials, and Seminar Speakers.

13. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the Training by any Federal, state, or local law or regulation, nor is Respondent required to perform or develop the Training by any other agreement, grant, or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the Training.

14. a. Completion Report. Respondent shall submit a Completion Report to EPA within forty-five (45) days of the completion of the Training and include the following:

- i. A detailed description of the Training as implemented;
- ii. Certification that the Training has been fully implemented pursuant to the provisions of this Consent Agreement;
- iii. Itemized costs, documented by copies of purchase orders and receipts or cancelled checks; and
- iv. A description of the environmental benefits resulting from implementation of the Training.

b. Respondent agrees that failure to submit the Completion Report required by subsection a., above, shall be deemed a violation of this Consent Agreement and Respondent shall be liable for stipulated penalties pursuant to Paragraph 17, below.

c. Respondent shall submit all notices and reports required by this Consent Agreement

by first class mail to: Prior to 1/6/07  
Monica Heimdal  
U.S. EPA, Region 8 (8ENF-W)  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466

On and after 1/7/07  
Monica Heimdal  
U.S. EPA, Region 8 (8ENF-W)  
1595 Wynkoop  
Denver, CO 80202-1129



d. In itemizing its costs in the Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible Training costs. Where the Completion Report includes costs not eligible for Training credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

15. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement and shall provide the documentation of any underlying research and data not more than seven days after a request for such information by EPA. In all documents or reports, including, without limitation, any Training reports submitted to EPA pursuant to this Consent Agreement, Respondent shall, by an officer, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

16. a. After receipt of the Completion Report described in Paragraph 14.a., above, EPA will notify Respondent, in writing, regarding: i) any deficiencies in the Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or ii)

EPA's conclusion that the project has been completed satisfactorily; or iii) EPA's conclusion that the project has not been completed satisfactorily and that stipulated penalties apply in accordance with Paragraph 17, herein.

b. If EPA elects to exercise option i. above, i.e., if the Completion Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of the Training completion itself, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days from receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the Training to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this Consent Decree. In the event the Training is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 17, herein.

17. Stipulated Penalties.

a. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the Training described in Paragraph 12, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below unless waived or reduced by EPA at its sole discretion:

i. Except as provided in subparagraph ii. immediately below, for a Training that has not been completed satisfactorily pursuant to this Consent Agreement,

Respondent shall pay a stipulated penalty to the United States in the amount of \$7,300.00.

ii. If the Training is not completed satisfactorily in accordance with this Consent Agreement, but the Complainant determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certified, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the Training, Respondent shall not be liable for any stipulated penalty.

iii. If the Training is completed in accordance with this Consent Agreement but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of \$1,200.00.

iv. For failure to submit the Completion Report required by Paragraph 14.a., above, Respondent shall pay a stipulated penalty in the amount of one hundred dollars (\$100.00) for each day after the due date shown in Paragraph 14.a. until the report is submitted.

b. The determinations of whether the Training has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the Training shall be in the sole discretion of EPA.

c. Respondent shall pay stipulated penalties not more than thirty (30) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 9, above. Interest and late charges shall be paid as stated in Paragraph 10 herein.

d. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Consent Agreement or of the statutes and regulations upon which this Consent Agreement is based, or for Respondent's violation of any applicable provision of law, except that EPA agrees not to seek penalties beyond that required by this Consent Agreement

to address the violations alleged in this Consent Agreement unless Respondent fails to comply with the terms of this Consent Agreement.

18. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the Training shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Water Act."

19. This Consent Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of Federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any Federal, state, or local permit.

20. Respondent and Mr. Scott Petro hereby agree not to claim any funds expended in performance of the Training as a deductible business expense for purposes of Federal taxes. In addition, Respondent and Mr. Scott Petro hereby agree that, within thirty (30) days of the date they submit their Federal tax reports for the calendar year in which the above-identified Training is completed, they will submit to EPA, at the name and address shown above in Paragraph 14.c., certification that any funds expended in performance of the Training have not been deducted from Federal taxes.

## **V. OTHER TERMS AND CONDITIONS**

21. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this Consent Agreement and to execute and legally bind that party to this Consent Agreement.

22. This Consent Agreement, upon incorporation into a Final Order by the Regional Judicial Officer, constitutes a settlement by EPA of all claims for civil penalties pursuant to sections

309(d) and 309(g) of the CWA, 33 U.S.C. §§ 1319(d) and (g), for the violations alleged in the Complaint. Nothing in this Consent Agreement is intended nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

23. This Consent Agreement shall not affect Respondent's right to assert any defense in any action by EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

24. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.

25. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this Consent Agreement.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8  
Complainant.

Date: 4/15/06

Michael T. Risner  
Michael Risner, Director  
David J. Janik, Supervisory Enforcement  
Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Date: 16 November 2006

Diane S. Sipe  
Diane Sipe, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

PETTRO PROPERTIES, LLC  
Respondent.

Date: 11/8/06

Burt Sipe

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **PETTRO PROPERTIES, LLC., DOCKET NO.: CWA-08-2005-0053**, was filed with the Regional Hearing Clerk on November 27, 2006.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Wendy Silver, Enforcement Attorney, U. S. EPA – Region 8, 999 18<sup>th</sup> Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on November 27, 2006, to:

Craig D. Galli  
Holland and Hart LLP.  
60 East South Temple, Suite 2000  
Salt Lake City, UT 84111

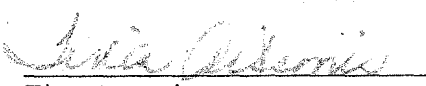
Pouch Mailed to:

Honorable Barbara Gunning  
U. S. Environmental Protection Agency  
Office of Administrative Law Judges (1900L)  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Telefaxed to:

U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268  
513-487-2063

November 27, 2006

  
Tina Artemis  
Regional Hearing Clerk



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